

REMARKS

This Amendment is being filed in response to the Office Action mailed on August 19, 2010. Reconsideration and allowance of the present application in view of the amendments made above and the remarks to follow are respectfully requested.

Claims 1-2 and 4-17 are pending in this application, where claim 3 has been currently canceled without prejudice and claims 11-17 have been currently added. Claims 1 and 5 are independent.

Applicant thanks the Examiner for acknowledging the claim for priority and receipt of certified copies of all the priority documents. Applicant further thanks the Examiner for acknowledging receipt and consideration of the Information Disclosure Statement filed on August 3, 2006.

By means of the present amendment, the current Abstract has been deleted and substituted with the enclosed New Abstract which better conforms to U.S. practice. Further, the specification has been amended to correct a certain informality.

By means of the present amendment, claims 1-2 and 4-10 have been amended for non-statutory reasons, such as for better form including beginning the dependent claims with 'The', changing "characterized in that" to --wherein--, and deleting reference numerals typically used in European practice that are known to not limit the scope of the claims. Such amendments to claims 1-2 and 4-10 were not made in order to address issues of patentability and Applicants respectfully reserve all rights under the Doctrine of Equivalents.

In the Office Action, the Examiner indicated that not all the references included in the specification and the International Search report have been filed with an information disclosure statement (IDS). The undersigned attorney gratefully acknowledges this indication and will advise the Applicant of the issue raised with regard to filing a further IDS, if needed.

In the Office Action, claims 4 and 6-9 are rejected under 35 U.S.C. §112, second paragraph for certain informalities in claims 4 and 6-8. In response, Applicants respectfully traverse this rejection. However, in the interest of advancing prosecution, claims 4 and 6-8 have been amended for better clarity and to remove the noted informalities. Accordingly, withdrawal of this rejection is respectfully requested.

In the Office Action, claims 1-2 and 4-6 are rejected under 35 U.S.C. §102(b) over an article entitled "Subwavelength Optical Magnetic-Resonance Imaging" (Schiller). Further, claim 3 is rejected under 35 U.S.C. §103(a) over Schiller in view of U.S. Patent No. 6,271,660 (Sprecher). Claim 7 is rejected under 35 U.S.C. §103(a) over Schiller in view of U.S. Patent No. Application Publication No. 2002/0108890 (Abrarov). Claim 8 is rejected under 35 U.S.C. §103(a) over Schiller in view of U.S. Patent No. Application Publication No. 2003/0085703 (Gleich). Claim 10 is rejected under 35 U.S.C. §103(a) over Schiller in view of U.S. Patent No. 4,676,640 (Briggs). These rejections are respectfully traversed. It is respectfully submitted that claims 1-2 and 4-17 are patentable over Schiller, Sprecher, Abrarov, Gleich and Briggs for at least the following reasons.

Schiller is directed to optical magnetic-resonance imaging (OMRI) where rare earth

ions and very high field gradients ($>10\text{T/cm}$) are used to increase resolution. As correctly noted on page 3 of the Office Action in rejecting claim 3, Schiller does not disclose or suggest any description of a field generator. Sprecher is cited in an attempt to remedy the deficiencies in Schiller.

Sprecher is directed to a precision permanent position magnet assembly for use with a magnetostrictive linear displacement transducer. The Sprecher magnet assembly includes three bar-type permanent magnets in a side by side alternating polarity. As clearly shown in the figures, such as FIGs 6 and 8, all three magnets have the same size and shape.

It is respectfully submitted that Schiller, Sprecher, and combination thereof, do not teach or suggest the present invention as recited in independent claim 1, and similarly recited in independent claim 5 which, amongst other patentable elements, recites (illustrative emphasis provided):

wherein the field generator for generating the inhomogeneous field has a first pole body of a first polarity and second pole bodies of a second polarity, the first pole body being located between the second pole bodies and having a tip for forming the focal region in the sample, the tip of the first pole extending beyond the second pole bodies, wherein the focal region in the sample is across from the tip and the focal region has a size below an optical resolution of the fluorescence microscope, and wherein a strength of the inhomogeneous magnetic field has a local minimum at the focal region; and

a processor configured to reconstruct distribution of the fluorescent markers in the sample from changes in the fluorescence radiation in response to moving the focal region.

A field generator having a first pole body between second pole bodies, where the tip


of the first pole extends beyond the second pole bodies, is nowhere disclosed or suggested in Schiller and Sprecher, alone or in combination. This provides substantial benefits, such as allowing from formation of a focal region in the sample across from the tip, as recited in independent claims 1 and 5, where the focal region has a size below an optical resolution of the fluorescence microscope, and the strength of the inhomogeneous magnetic field has a local minimum at the focal region. Abrarov, Gleich and Briggs are cited to allegedly show other features and do not remedy the deficiencies in Schiller and Sprecher.

Accordingly, it is respectfully submitted that independent claims 1 and 5 are allowable, and allowance thereof is respectfully requested. In addition, it is respectfully submitted that claims 1-2, 4 and 6-17 should also be allowed at least based on their dependence from independent claims 1 and 5, as well as their individually patentable elements. Accordingly, separate consideration of each of the dependent claims is respectfully requested.

In addition, Applicant denies any statement, position or averment of the Examiner that is not specifically addressed by the foregoing argument and response. Any rejections and/or points of argument not addressed would appear to be moot in view of the presented remarks. However, the Applicant reserves the right to submit further arguments in support of the above stated position, should that become necessary. No arguments are waived and none of the Examiner's statements are conceded.

In view of the above, it is respectfully submitted that the present application is in condition for allowance, and a Notice of Allowance is earnestly solicited.

Respectfully submitted,

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